

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Nooksack Post Office,
Nooksack, Washington 98276

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DOCKET NO. A2011-17

MOTION OF THE PETITIONER, CITY OF NOOKSACK, TO
COMPEL ADMINISTRATIVE RECORD

(June 14, 2011)

I. INTRODUCTION

Comes now the Petitioner, the City of Nooksack, and respectfully moves the Regulatory Commission to issue an Order to Compel the United States Postal Service to produce the administrative record supporting closure of the Nooksack Post Office within 15 days of filing of this motion. The City of Nooksack has previously submitted a Motion for Late Acceptance of its Form 61 or Initial Brief in Support of the Petition such that the initial brief shall be filed no later than 20 days past receipt of the administrative record.

II. ARGUMENT

A. THE POSTAL REGULATORY COMMISSION ORDER NO. 734 REQUIRES PRODUCTION OF THE ADMINISTRATIVE RECORD.

On May 17, 2011 City of Nooksack Mayor, James Ackerman, filed a Petition for Review regarding the closure of the Nooksack Post Office located at 605 Nooksack Avenue, Nooksack, Washington 98276. In response to the Petition, the Commission issued Order 734, Accepting Appeal and Establishing a Procedural Schedule.

Pursuant to Order 734, and the Commission's authority in 39 U.S.C. §3001, *et seq*, the Commission issued several deadlines. 39 U.S.C. §3001.113, requires the Postal Service to file the administrative record "within 15 days after the date on which the Petition for Review is filed with the Commission". This requirement is also recognized in 39 U.S.C. §404(d).

Pursuant to this authority, the Commission required the Postal Service to produce the administrative record on or by May 31, 2011. The Postal Service has not complied, and is in violation of the Commission's order, statutory authority, and a long line of Postal Regulatory Commission appeals wherein the Postal Service ultimately produced the administrative record. *Please see, Dockets A2011-1, A2011-4, and A2011-8.*

In its earlier pleadings the Postal Service has argued that the closure of the Nooksack Post Office was an emergency suspension, thus raising the inference that no administrative record exists. However, the Postal Service, since giving notice on

April 1, 2011 that the way in which the Postal Service delivers mail services to the City of Nooksack may change, has been soliciting written comments regarding the Nooksack Post Office. *Appeal of Closure of Nooksack Post Office, Nooksack, Washington, Exhibit B.* Further, on April 7, 2011 a recorded public hearing was held and comments were presented to representatives of the Postal Service. *Appeal of Closure of Nooksack Post Office, Nooksack, Washington, at page 5.* Thus it is believed the Postal Service has received significant input from the community regarding the Postal Service's proposed closure of the Nooksack Post Office.

B. THE POSTAL REGULATORY COMMISSION NEEDS THE ADMINISTRATIVE RECORD IN ORDER TO MEANINGFULLY REVIEW THE DETERMINATION OF THE POSTAL SERVICE TO CLOSE THE NOOKSACK POST OFFICE.

The Commission's ability to properly review the Postal Service's decision to close the Nooksack Post Office is predicated on having a complete administrative record. Only with a completed administrative record can the Commission fully evaluate the concerns, disadvantages and advantages addressed in the Postal Service's determination. This was specifically contemplated in the 2006 Postal Accountability and Enhancement Act in which the requirements of notice and appeal were addressed. The requirement for the Commission to review the administrative record was also specifically contemplated under the Act.

Pursuant to 39 U.S.C. §404(d)(5) the Regulatory Commission may set aside the Postal Service's determination, affirm the determination, or order the entire matter be remanded to the Postal Service for further consideration. Without an administrative

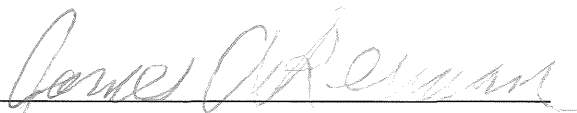
record, the Commission is left with nothing to review and nothing to support its final determination of the issues raised in the Petitioner's Appeal.

Accordingly, for there to be a meaningful review in the instant case it is imperative that the Commission obtain and review the record that compelled the Postal Service to close the Nooksack Post Office. Production of the record is required under 39 U.S.C. §404 and 39 C.F.R. §241.3. The Postal Service's unwillingness to produce the record as required by the Regulatory Commission's May 19, 2011 order not only frustrates the appeal process but marginalizes the detrimental effect the closing of the Nooksack Post Office will have on the citizens of Nooksack who rely on the post office for their postal needs.

III. CONCLUSION

For the reasons set forth above the Petitioner, the City of Nooksack, respectfully requests the Postal Regulatory Commission enter an order requiring the Postal Service to make the record available within 15 days.

Respectfully submitted this 14 day of June, 2011.



JAMES ACKERMAN, Mayor,
City of Nooksack